ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
Implementation of the Telecommunications Act of 1996	)	CC Docket No. 96-115
Telecommunications Carriers' Use of Customer Proprietary Network Information and other Customer Information	)	

OPPOSITION OF BELL ATLANTIC TO PETITIONS FOR RECONSIDERATION

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OPPOSITION OF BELL ATLANTIC[1] TO PETITIONS FOR RECONSIDERATION

I. Introduction and Summary

Nearly all of the twenty-seven reconsideration petitions filed on the Commission's Order implementing the customer proprietary network information ("CPNI") provisions of the Act agree with Bell Atlantic that the Commission can best serve the needs and expectations of the public by providing carriers more flexibility in use of their CPNI. Fully twenty-one petitioners urge the Commission to rethink its restrictions on using CPNI to sell CPE, eighteen seek more flexibility for information services, and seventeen ask the Commission to reconsider its prohibition on using CPNI to win-back customers.

By contrast, a handful of petitioners, ignoring the needs of the public, are trying to use this proceeding as a competitive weapon by asking for more restrictions on the Bell

[1] The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

companies and other incumbent local exchange carriers. Those restrictions would be inconsistent the 1996 Act and would prevent those carriers from serving the needs of their customers. Their advocates do not even try to show that adopting them would provide any public benefit, because clearly they would not. The Commission should deny these anticompetitive petitions, reaffirming its findings that the CPNI provisions of the Act, Section 222, apply equally to all carriers and that Section 272 does not impose any additional CPNI obligations on the Bell companies.

The Commission should grant the petitions to eliminate or modify the highly burdensome systems requirements that the Commission prescribed. In particular, the Commission should eliminate or modify the requirements to provide, and maintain for one year, an electronic "audit" every time a record is accessed and the obligation to "flag" the first few lines of the first screen of each customer's database record with the customer's CPNI consent status and range of services.

II. Section 222 Applies Equally To All Carriers.

A. *Section 272 Does Not Override Section 222.*

Despite unequivocal statutory language that Section 222 applies to "[e]very telecommunications carrier," 47 U.S.C. § 222(a), a few competing carriers persist in arguing for more stringent CPNI requirements on the Bell companies than on other carriers. MCI at 2-23, Sprint at 6-8, CompTel (unnumbered), AT&T at 23-24. These parties make no arguments that justify any change to the Commission's unequivocal finding that imposing more stringent requirements "would not further the principles of customer convenience and control embodied in section 222, and could potentially undermine customers' privacy interests as well." *Second*

Report and Order and Further Notice of Proposed Rulemaking, 13 FCC Rcd 8061, ¶ 72 (1998) ("Order").

Prior to enacting the 1996 Act, Congress considered imposing more stringent CPNI restrictions on the BOCs than other carriers but rejected that approach, instead applying Section 222 equally to "[e]very telecommunications carrier." When it enacted the 1996 Act, it certainly knew the relative sizes of the Bell companies and their competitors. It decided that applying the same CPNI provisions to all carriers did not give the Bell companies an "insurmountable information advantage" over their competitors, as CompTel claims, and that the public's interest in obtaining one-stop shopping from a single entity was paramount. Even in Section 272, which imposes tight restrictions on most of the relationships between the Bell companies and their long distance affiliates, Congress recognized the overriding public interest in having a single source for all telecommunications services. In Section 272(g)(3), Congress specifically exempted joint marketing activity from the nondiscrimination provisions of Section 272(c)(1). It is hard to imagine clearer Congressional direction. *See* Further Comments of Bell Atlantic and NYNEX at 7 and Att. at 1-11. (filed Mar. 17, 1997).

MCI claims, however, that Congress intended not to apply Section 222 to all carriers, because it included the introductory phrase "[e]xcept as required by law" in Section 222(c)(1). This, MCI argues, means that the provisions of Section 272 override 222(c)(1) when the two are in conflict. MCI at 7-8. There are two fallacies with that reasoning. First, it is clear that Congress included that phrase so that there would be no question that disclosures of customer information to law enforcement agencies, regulators, and other public officials that are required by subpoena, regulation, statute, or other legal process would not be precluded. Where Congress intended to make a provision of the Communications Act subject to another section of

the Act, it was fully capable of doing so.[2] Second, MCI cites the "[e]xcept as required by law" phrase for the proposition that disclosure to a Bell company's affiliate triggers a requirement also to disclose the information to others under Section 272. The CPNI provisions relating to disclosure, however, appear in Section 222(c)(2), which does not contain the "[e]xcept as required by law" language. Therefore, even if the phrase were a reference to Section 272, which, as the Commission held, it is not, it would not apply to disclosure to the 272 affiliate.

MCI then argues that, if CPNI were disclosed to a Bell company's 272 affiliate based on a customer's oral approval, as the Commission permits on outbound and inbound calls for affiliates of any carrier (with notice and verification), the Commission should require the Bell company to disclose it to any third party that also obtained oral approval from the customer. MCI at 8-11. That proposal would, of course, violate the Act. As the Commission accurately found, Section 222(c)(2) specifies that disclosure of CPNI must be made to nonaffiliated third parties only upon the prior written request of the customer, not upon oral request, as MCI's proposal would require. Order at ¶¶ 114, 165. Bell Atlantic is already required to disclose CPNI to MCI if the customer has requested such disclosure in writing, regardless of whether Bell Atlantic's 272 affiliate had received that customer's CPNI, but may not lawfully do so upon oral

[2] As just a few examples, Section 251(a)(2) references Sections 255 and 256, 221(b) is made subject to 225 and 301, 214(e) references 254 and 410, and 272 contains references to five other sections of the Act.

request. The Commission should reject MCI's attempt under the guise of nondiscrimination to stage an end-run around the statutory requirements.[3]

MCI further claims that the Commission failed to give notice that it might find that Section 222 overrides the nondiscrimination provisions of Section 272. MCI at 6-7. However, in a Public Notice that MCI cites, *Common Carrier Bureau Seeks Further Comment on Specific Questions in CPNI Rulemaking*, DA 97-385 (rel. Feb. 20, 1997), the Bureau posed a series of detailed questions on just this subject. In the first ten questions, the Commission asked about the interplay of various provisions of Sections 222 and 272, including how the nondiscrimination provisions of Section 272(c)(1) can be reconciled with the Section 222 requirements that apply to all carriers. MCI fully availed itself of the opportunity to file comments, as did Bell Atlantic and a number of other parties. It is disingenuous for MCI to claim that the Commission gave no notice that it was planning to consider this issue.

B. *PIC Information is CPNI.*

MCI also claims that the identity of the customer's presubscribed interexchange carrier ("PIC") and information as to whether a customer has chosen to "freeze" its PIC are non-CPNI customer information and must be disclosed to others if disclosed to the Bell company's long distance affiliate. MCI at 14-18. In reality, however, information relating to the identity of an individual customer's presubscribed interexchange service and whether the customer has

[3] MCI makes an identical argument that it has the right to CPNI upon receiving oral customer consent if any incumbent exchange carrier uses its CPNI upon oral customer consent, citing Sections 201(b) and 202(a). MCI at 18-21. These sections give third parties no more right to CPNI in the absence of the written consent required by Section 222(c)(2) than does Section 272. Nor does using a third party to obtain that oral consent, as MCI proposes, cure the defect. *See id.* at 21.

chosen to restrict other carriers from submitting changes to its choice of providers fall squarely within the definition of CPNI. *See* 47 U.S.C. § 222(f)(1) (CPNI is "information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service."). As a result, PIC information, like any other information about a customer's service, is subject to the provisions of Section 222 and the rules adopted in this proceeding.

III. CPNI Is Not An Unbundled Network Element.

MCI erroneously claims that the Commission has already found that CPNI is an unbundled network element that must be part of interconnection agreements and disclosed to competitors whenever it is disclosed to an incumbent exchange carrier's affiliate. MCI at 21-23, citing Order at ¶ 166. The paragraph that MCI cites, however, simply refers to an earlier discussion in the Order in which the Commission specifically finds that an incumbent does not have an obligation to disclose CPNI to a competing carrier that has "won" a customer. Order at ¶ 84. The Commission also points out that, under Section 251, the incumbent exchange carrier needs to disclose certain information that is "necessary for the provisioning of service by a competitive carrier," *id.*,[4] but it has not found that CPNI itself constitutes an unbundled element, as MCI claims. Nor has it found that an agreement regarding CPNI must be included in interconnection agreements.

Congress defined "network elements" as the physical "facilit[ies] or equipment" used to transmit telephone calls, together with any "features, functions, and capabilities" provided by these physical elements. 47 U.S.C. § 153(29). These "features, functions and capabilities"

[4] The scope of this requirement is discussed in Section IV, below.

include "information sufficient for billing and collection" to the extent the information is provided "by means of" one of the physical elements of the telephone network that otherwise must be unbundled. The Commission has therefore held that "to comply fully with [the Act's unbundling requirements] an incumbent LEC must provide, upon request, nondiscriminatory access to operations support systems functions for . . . billing of unbundled network elements." *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, *First Report and Order*, 11 FCC Rcd 15499, ¶ 525 (1996).

These requirements are triggered only when the competitor has subscribed to a physical element for which it needs to bill. But MCI appears to claim that in some way disclosure of CPNI to an incumbent exchange carrier's interexchange affiliate triggers disclosure to competitors even when the competitor has not subscribed to any physical element, i.e., customers' CPNI will be available as an unbundled network element whenever it is released to an affiliate. This is just another example of MCI trying to subvert the clear requirements of Section 222(c)(2) and consumers' privacy rights by trying to obtain access to CPNI without obtaining prior written authorization. The Commission should flatly reject such efforts.

IV. Mandatory Disclosure Should Continue to be Limited to Information Needed to Initiate and Bill For the Services Being Rendered.

MCI argues at length that an incumbent carrier should be required to disclose all CPNI relating to a customer to another carrier, without prior approval, in order for the latter to initiate any service to the customer, whether or not the CPNI relates to the newly-provided service. MCI at 23-34. It claims that any limitation on the scope of the CPNI that is disclosed would inhibit or obstruct the new carrier's ability to initiate service. *Id.* at 25-26. MCI's request obviously goes too far.

The Commission appropriately found that Section 222 does not give a carrier the right to obtain CPNI from another carrier without prior written authorization from the customer just because that customer has taken service from that carrier, but that Section 251(c)(3) and (4) may impose an obligation to disclose the CPNI needed for the new carrier to initiate service. Order at ¶ 84. MCI claims that the Commission should remove any limitation on the information that must be disclosed, because "installation of any type of service is virtually impossible without the ILEC's entire customer record." MCI at 25. But disclosure of CPNI that is unrelated to the initiation or billing of the new service (i.e., the uses specified in § 222(d)(1)) would be inconsistent with the customer's privacy expectations and with the prior written authorization requirement of § 222(c)(2).

For example, there is no justification for requiring disclosure of information about a customer's local service to a carrier that is providing intraLATA toll service or voice mail service to that customer. MCI cites as support for its broad request the situation in which a customer orders from the new carrier the same local services that the customer received from the incumbent. In that circumstance, there is no reason why the new carrier should receive information about other services, such as intraLATA toll, which has no bearing on the services being ordered. Nor should the incumbent be required to provide any call detail data, including message units, for calls placed before the customer changed carriers. Such information is unrelated to the ability of the new carrier to initiate or bill for its service, nor is it required for interconnection under Section 251.

V. Use of the Total Service Approach Should Continue To Apply Equally to All Carriers.

Comcast likewise tries to use CPNI as a competitive weapon, ignoring customer expectations, when it asks the Commission to limit application of the Total Service approach to "competitive" carriers and markets. In particular, Comcast would apply the Total Service approach to wireless providers that do not have incumbent exchange carrier affiliates, like itself, but not apply it to wireless or interexchange carriers with incumbent exchange carrier affiliates. Comcast at 19-25. Under that approach, customers who subscribe to both wireless (or interexchange) and wireline services from the same incumbent exchange carrier and its affiliates could not be told about packages of such services that might be available unless they have given prior consent to use of CPNI for that purpose. Comcast, however, would be under no such restrictions.

The Commission adopted the Total Service approach in recognition that "[c]ustomers do not expect that carriers will need their approval to use CPNI for offerings within the existing total service to which they subscribe" while continuing to give customers the control over access to CPNI that the Commission found the Act affords. Order at ¶ 55. Comcast, however, tries to champion its interest in obtaining an unfair competitive advantage over wireless companies that are affiliates of incumbent exchange carrier as superior to the interests and expectations of the public. Comcast also fails to address the clear statutory requirement to apply the CPNI rules equally to "[e]very telecommunications carrier," because it cannot refute the fact that its proposal would be unlawful. *See* 47 U.S.C. § 222(a). For the same reason that the Commission should reject the attempts of wireline carriers to undermine these requirements, it should also deny Comcast's similar proposal.

The Commission should also deny the requests of LCI and CompTel to apply the Total Service approach only to non-dominant carriers. LCI at 11-15, CompTel (unnumbered). The Commission's Rules place non-dominant carriers in the same competitive posture as dominant providers – each has the same right and ability to seek customer approval to use CPNI in marketing services in the various baskets. All carriers need the customer's affirmative consent to use CPNI to market services in a basket other than the one(s) from which they already provide service to that customer. Once the customer has decided to take wireless or interexchange services from an affiliate of the incumbent wireline carrier, or to take local wireline service from an affiliate of a non-dominant interexchange or wireless carrier, however, the customer has selected a provider. Then, the customer's privacy expectations and interests in obtaining "one-stop shopping" to obtain additional features of all services to which he or she has subscribed should be paramount, as it is under the Total Service approach.

Likewise, the Commission should reject the arguments that previously-authorized affirmative releases of CPNI under Computer Inquiry III should no longer be effective. LCI at 16-19, CompTel (unnumbered). Customers who have already given their approval to allow a Bell company to use CPNI to market information services have already exercised the control over CPNI that the Act gives them and made an informed choice. Under the Computer III requirements, those customers have always had the right to withdraw their consent, and may do so under the new requirements as well. It would simply be an imposition to these customers, with no overriding public benefit, to require these same customers to give the same approval again.

VI. The Electronic "Audit" and "Flag" Requirements Should Be Removed or Modified.

A dozen petitioners ask the Commission to eliminate or reduce the "electronic audit" requirement under which carriers must establish an electronic mechanism that tracks each access to customer accounts, including when a record is opened, by whom, and for what purpose, and to retain the records of those contacts for at least one year. 47 C.F.R. § 64.2009(c), Order at ¶ 199. Many petitioners also ask the Commission to defer or modify the "flag" requirement that the first few lines of the first screen of a customer's service record show the customer's approval status and existing services. 47 C.F.R. §64.2009(a), Order at ¶ 198. As Bell Atlantic pointed out in its petition, these detailed requirements are unnecessary and very expensive. Instead of prescribing specific measures such as these, therefore, the Commission should establish the substantive requirements that carriers must meet and leave it to the carrier to decide the best way to ensure compliance with those requirements, bearing in mind that, if challenged, they must show that they have complied. *See* Bell Atlantic at 22-23.[5]

In its order prescribing these requirements, the Commission cites a Bell Atlantic *ex parte* meeting for the proposition that such documentation would not be overly burdensome. Order at nn.689, 692. In that meeting, however, Bell Atlantic did not address the "flag" issue. Rather, at the discussion during the meeting, Bell Atlantic indicated that its systems that contain CPNI and which its Business Office representatives routinely access during customer contacts automatically place a notation when a customer record is changed, such as when a new service is added, an existing service deleted, or a bill adjusted. They do not, however, currently have the

[5] For example, to ensure that it complies with the CPNI requirements, Bell Atlantic has already undertaken extensive training of thousands of its marketing employees and has developed hundreds of pages of training materials. This training will be an ongoing effort.

capability to add an indication each time the record is opened if no changes are made. Nor do they give the name of the person accessing the account, the purpose of access, or any other information that would need to be entered manually, as the new rule appears to require. *See* Section 64.2009(c). Instead, the automatic indication is limited to the time and date of access and the password of the person who is logged into the terminal. Many of Bell Atlantic's systems purge these records on a regular schedule that varies by system but is generally less than the Commission's one-year minimum retention requirement.

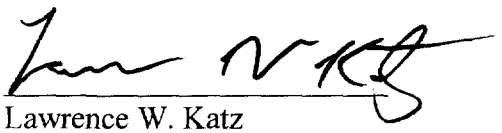
Large and small carriers alike have shown that the aggregate cost of implementing an electronic audit system that complies with the new rule would be at least in the hundreds of millions of dollars, would take years to implement, and any benefit would be far less than this immense cost would warrant. While a firm figure is still being calculated, Bell Atlantic preliminarily estimates that the cost of complying with the new requirements could approach or exceed $100M and would take at least one additional year. Given the need to devote available personnel to modifying its systems to address other critical requirements, such as year 2000 issues, continued improvements in interfaces for use by competing carriers, and implementing the new and increased universal service rules, for example, Bell Atlantic's CPNI compliance may need to be delayed further. Accordingly, at the very least, if it does not strike the systems requirements entirely, as it should, the Commission should eliminate the need to insert information manually, clarify that the electronic audit requirement is limited to systems that are routinely accessed for sales and marketing, limit the electronic audit provision to actual sales or marketing access, reduce the retention period to three months, and defer compliance for a minimum of one year beyond the current January 26, 1999 date.

As to the "flag" requirement, the Commission at most should require display of the CPNI consent status only on systems that are routinely used by marketing and sales personnel to sell services outside of a single "bucket" of services. For example, if a wireless record system is used only by wireless sales personnel to sell wireless services, there is no need to indicate the customer's CPNI consent status. Similarly, unless a record is being used to sell services in more than one bucket, there is no need to indicate the range of services to which a customer subscribes. Finally, at the carrier's discretion, the Commission should permit CPNI consent and subscription information to reside on a separate system, rather than putting it on each database, so long as the separate system is available to all applicable sales and marketing personnel and those personnel are trained to review that system whenever needed.

VII. Conclusion.

Accordingly, the Commission should deny the petitions to reconsider the portions of the Order addressed above and eliminate or modify the electronic audit requirement.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of June, 1998 a copy of the foregoing "Opposition of Bell Atlantic to Petitions for Reconsideration" was sent by first class mail, postage prepaid, to the parties on the attached list.

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